

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LACKAWANNA CHIROPRACTIC P.C., a
New York professional corporation,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

TIVITY HEALTH SUPPORT, LLC, a
Delaware limited liability company,

Defendant.

18-CV-649
DECISION & ORDER

On June 7, 2018, the plaintiff commenced this putative class action. Docket Item 1. On May 21, 2019, the parties informed the Court that they had reached a settlement agreement. Docket Item 37. On May 22, 2019, this Court ordered that the case be dismissed in light of the parties' agreement but preserved the parties' right to reopen the case upon good cause shown within 60 days if the settlement was not consummated. Docket Item 38.

On June 28, 2019, the plaintiff moved for preliminary approval of the class action settlement. Docket Item 39. After the defendant did not respond, on August 21, 2019, this Court reopened this case and referred it to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 40.

On August 29, 2019, Judge McCarthy issued a Report and Recommendation ("R&R") finding that the plaintiff's motion should be denied. Docket Item 41. The parties

did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).¹

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to deny the plaintiff's motion.

For the reasons stated above and in the R&R, the plaintiff's motion for preliminary approval of the class action settlement, Docket Item 39, is DENIED. The

¹ Although the parties requested and received several extensions to the deadline for objections, see Docket Items 43, 44, 46, and 47, neither party filed an objection by the extended deadline of December 13, 2019.

case is referred back to Judge McCarthy for further proceedings consistent with the referral order of August 21, 2019, Docket Item 40.

SO ORDERED.

Dated: December 26, 2019
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE